

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FRANK EDWARD ANTROBIUS,

Plaintiff,

v. Civil Action No. 1:18-CV-0003
(Judge Kleeh)

JASON T. GAIN, THOMAS A. BEDELL,
DAVID C. MIRHOSEINI, and ANDREA L.
ROBERTS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 21],
DENYING AS MOOT SECOND MOTION FOR APPOINTED COUNSEL [DKT.
NO. 20], AND DISMISSING COMPLAINT AS FRIVOLOUS

This matter is pending on the Second Motion for Appointed Counsel [Dkt. No. 20] filed by pro se Plaintiff Frank Edward Antrobius ("Antrobius"), and on the August 28, 2019, Report and Recommendation ("R&R") of Magistrate Judge Michael J. Aloi ("Magistrate Judge") [Dkt. No. 21]. For the reasons set forth below, the Court adopts the R&R, denies as moot the second motion for appointed counsel [Dkt. No. 20], and dismisses the complaint with prejudice as frivolous.

I. BACKGROUND

Antrobius, an inmate currently incarcerated at the Mount Olive Correctional Complex ("MOCC") in Mount Olive, West Virginia, filed a civil rights complaint under 42 U.S.C. § 1983 on January 1, 2018 [Dkt. No. 1]. Antrobius also filed a motion for leave to proceed *in forma pauperis* ("IFP") [Dkt. No. 2]. The IFP motion

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was granted on February 13, 2018, and Antrobius was directed to pay an initial partial filing fee ("IPFF") within 28 days [Dkt. No. 7]. On March 19, 2018, Plaintiff paid the IPFF. On February 12, 2019, Antrobius filed a motion to appoint counsel which was denied by order entered on March 19, 2019 [Dkt. No. 17]. On June 25, 2019, Antrobius filed a second motion for the appointment of an attorney [Dkt. No. 20].

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred this matter to the Magistrate Judge for initial screening and a report and recommendation. On August 28, 2019, the Magistrate Judge entered a R&R recommending that Plaintiff's complaint be dismissed with prejudice as frivolous pursuant to 28 U.S.C. § 1915A(b)(1) [Dkt. No. 21]. The R&R specifically warned that the pro se Plaintiff had "fourteen days (filing of objections) and then three days (mailing/service), from the date of the filing this Report and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Id. at 6].

The R&R further stated that the failure to file written objections "shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals" [Dkt. No. 21 at 7]. See Wells v. Shriners Hosp.,

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109 F.3d 198, 199-200 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). The R&R instructed that a “copy of such objections shall be served” on the District Judge [Id. at 7]. The R&R was mailed to Petitioner, via certified mail, on August 28, 2019 [Dkt. No. 21-1]. Service of the R&R was accepted on August 30, 2019 [Dkt. No. 22].

On September 13, 2019, Antrobius filed another motion for appointment of an attorney [Dkt. No. 23]. The motion was denied by order entered on March 4, 2020 [Dkt. No. 25], and Antrobius was directed to file specific written objections to the Magistrate Judge’s R&R within “fourteen days (filing of objections) and then three days (mailing/service)” from the entry of the March 4, 2020 order [Id.]. The order was received, via certified mail, on March 6, 2020 [Dkt. No. 26]. On March 16, 2020, Plaintiff filed a fourth motion for appointed counsel [Dkt. No. 27], and the motion was denied by order entered on the same date [Dkt. No. 28]. To date, Antrobius has filed no objections to the R&R.

II. DISCUSSION

When reviewing a magistrate judge’s R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, “the Court may adopt, without explanation, any of the magistrate judge’s recommendations” to which there are no objections. Dellarcirprete

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v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because pro se Plaintiff has not objected, the Court is under no obligation to conduct a de novo review. Nevertheless, the Court studied the record, reviewed the R&R for clear error, and agrees that the complaint should be dismissed as frivolous.

III. CONCLUSION

Upon careful review, and finding no clear error, the Court **ADOPTS** the Report and Recommendation [Dkt. No. 21] in its entirety. The Court **ORDERS** that:

- 1) The second motion for appointed counsel [Dkt. No. 20] be **DENIED AS MOOT**;
- 2) The Complaint [Dkt. No. 1] be **DISMISSED WITH PREJUDICE as frivolous** pursuant to 28 U.S.C. § 1915A(b)(1); and
- 3) The matter be **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies

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of both orders to the pro se Plaintiff, certified mail and return receipt requested.

DATED: March 26, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE